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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 JESSE KNERR,

10 Plaintiff,

11 v.

12 HENRY RICHARDS, Ph.D.,

13 Defendant.

Case No. 08-5021 RJB/KLS

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

14 This civil rights action has been referred to United States Magistrate Judge Karen L.
15 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is
16 Plaintiff's motion for appointment of counsel. Dkt. # 34. Having carefully reviewed Plaintiff's
17 motion, Defendants' response (Dkt. # 37)¹, and the balance of the record, the Court finds, for the
18 reasons stated below, that Plaintiff's motion should be denied.

19 **I. DISCUSSION**

20 There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983.
21 Although the court, under 28 U.S.C. § 1915(d), can request counsel to represent a party proceeding
22 *in forma pauperis*, the court may do so only in exceptional circumstances. *Wilborn v. Escalderon*,
23 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984);

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26 ¹Plaintiff filed a reply, but failed to sign it. Dkt. # 38. The Court ordered Plaintiff to sign
27 his reply and re-file it with the Court on or before January 9, 2009 and re-noted his motion for
28 counsel for the same date. Dkt. # 39. Plaintiff failed to do so. Pursuant to Fed.R.Civ.P. 11(a), the
Court shall order the reply stricken and has not considered it in determining this motion.

1 *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires
2 an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to
3 articulate his claims *pro se* in light of the complexity of the legal issues involved. *Wilborn*, 789
4 F.2d at 1331. Neither of these factors is dispositive and both must be viewed together before
5 reaching a decision on request of counsel under Section 1915(d). *Id.*

6 Plaintiff protests that he has no legal knowledge or abilities, that he has not authored the
7 complaint or subsequent filings in this matter, but that they were prepared by some unnamed person
8 or persons on his behalf. Dkt. # 38, pp. 1, 5. However Mr. Knerr has chosen to present his claims
9 to this Court, he has done so in a manner demonstrating an adequate ability to articulate his claims
10 *pro se* and has not demonstrated that the issues involved in this case are complex or that he has had
11 any difficulties in expressing them. There is nothing in the motion for counsel presented to the
12 Court to indicate that a finding of exceptional circumstances is warranted in this case. While
13 Plaintiff may not have vast resources or legal training, he meets the threshold for a *pro se* litigant.
14 Concerns regarding investigation and discovery, an absence of legal training and limited access to
15 legal materials are not exceptional factors, but are the type of difficulties encountered by many *pro*
16 *se* litigants. In his pleadings, Plaintiff cites to numerous state and federal cases, the Constitution,
17 federal statutes, the Revised Code of Washington, the Washington Administrative Code and Black's
18 Law Dictionary. Dkt. # 18. There are also numerous avenues of discovery available to the parties
19 through the Federal Rules of Civil Procedure during the litigation process.

20 Plaintiff also states that there is a likelihood of success on the merits, however, he has not
21 provided any further information to support his contention other to state generally that his case is
22 meritorious and important. Dkt. # 34. This is not sufficient to carry the burden under this prong.
23 *See, e.g., Wilborn*, 789 F.2d at 1331. Accordingly, the Court finds that counsel is not necessary in
24 this case.

25 Accordingly, it is **ORDERED**:

26 (1) Plaintiff's motion to appoint counsel (Dkt. # 34) is **DENIED**.

27 (2) Plaintiff's reply (Dkt. # 38) is **STRICKEN**.

1 (3) The Clerk is directed to send copies of this Order to Plaintiff and counsel for
2 Defendants.

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4 DATED this 16th day of January, 2009.

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7 Karen L. Strombom
8 United States Magistrate Judge
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